# Committee on Ways and Means

## Fact Sheet – Mexico Totalization Agreement

**Overview**

- On June 29, 2004, the Commissioner of Social Security signed a totalization agreement with the Director General of the Mexican Social Security Institute. This is the first step in a process that requires review (in order) by the State Department, the White House, and the Congress to enter into a formal agreement. In addition, the Mexican Senate must approve the totalization agreement.

**Background**

- So-called "totalization" agreements are bilateral agreements between the United States and another country to coordinate their Social Security programs. The Social Security Administration (SSA) has totalization agreements in force with 20 countries, including Canada, Chile, South Korea, Australia and most of Western Europe. A totalization agreement serves two purposes:
    - Eliminates the need to pay Social Security taxes in both countries when U.S. companies send workers to the other country (and vice versa).
    - Protects benefit eligibility for workers who divide their careers between the two countries.

**Proposed Totalization Agreement with Mexico**

- According to the GAO[1], the proposed agreement will likely increase the number of unauthorized Mexican workers and their family members eligible for Social Security benefits.
    - Mexican workers who previously lacked the required 40 quarters of coverage could qualify with as few as 6 quarters of coverage (benefits would be prorated to reflect only credits earned in the U.S.).
    - More family members of Mexican workers would become entitled, because the agreement waives rules that prevent payments to non-citizen dependents living outside the U.S.
- According to SSA, approximately 50,000 U.S. and Mexican workers would receive a pro-rated "totalized" benefit from Social Security after the first five years of the agreement (this number does not include those newly eligible for family benefits).
- Five-year costs to the U.S. Social Security system are estimated at $525 million. These costs are for additional benefits to eligible U.S. and Mexican workers and reduced Social Security tax contributions from foreign companies and their employees.
- Social Security actuaries estimate that a totalization agreement with Mexico would have a negligible long-range effect on Social Security's long-term financing. However, according to GAO, an agreement with Mexico would involve highly uncertain costs and could potentially affect the program's long-term solvency if Social Security's experts underestimated the number of beneficiaries by more than 25 percent.
- About 3,000 U.S. workers and their employers would save about $140 million in Mexican social security and health insurance taxes over the first five years of the agreement.

---

[1] *Social Security: Proposed Totalization Agreement with Mexico Presents Unique Challenges (GAO-03-993)*

**Totalization Agreements and Benefits for Unauthorized Immigrants**

- **Whether or not a totalization agreement exists, unauthorized immigrants may receive *credit* toward Social Security for their work, but they cannot *collect benefits* while living in the United States until they obtain legal resident or U.S. citizen status**. In addition, under the recently passed *Social Security Protection Act of 2004* (P.L. 108-203), a non-citizen must have been authorized to work in the United States at some point during their career in order to be eligible for benefits, effective for individuals filing for benefits based on Social Security numbers issued on or after January 1, 2004.
- **A totalization agreement with Mexico has no effect on retired or disabled workers who are Mexican citizens living outside the U.S. who already have enough credits in the U.S. Social Security system to qualify for benefits.** Generally, non-citizen retired or disabled workers living outside the United States for more than 6 consecutive months may not receive benefits unless they meet one of several exceptions. For example, a non-citizen retired or disabled worker *may* receive payments outside the United States (including benefits based on unauthorized work in the United States) if he/she is a citizen of a country that has a social insurance system that pays benefits to eligible U.S. citizens residing outside that country, which Mexico does.
- **A totalization agreement overrides benefit restrictions to non-citizen spouses and children.** Under current law, non-citizen spouses and children must have lived in the United States for at least five years (lawfully or unlawfully), and the family relationship to the worker must have existed during that time in order for them to receive benefits while outside the United States. A totalization agreement overrides this requirement.

**Congressional Review of Totalization Agreements**

- Totalization agreements are subject to congressional review, once the President submits it to Congress.
- The agreement goes into effect automatically unless the House of Representatives or the Senate adopts a resolution of disapproval within 60 days after receipt of the agreement from the President, counting days when either House of Congress is in session.
- According to the Congressional Research Service, the resolution of disapproval mechanism currently in the Social Security Act is an unconstitutional legislative veto, based on the Supreme Court's decision in *INS v. Chadha* (462 U.S. 919 (1983)) where the Supreme Court struck down a similar provision in the Immigration and Nationality Act.
- Since Congress has never rejected a totalization agreement, the fact that the mechanism for disapproval is unconstitutional has not been an issue. However, unless the law is changed, congressional utilization of the mechanism currently in the Social Security Act could give rise to a judicial challenge, potentially resulting in a determination that the agreement is effective. The Subcommittee is currently researching legislative options for change.

**Next Steps**

- The Subcommittee will hold a hearing on the proposed totalization agreement once it is submitted to the Congress. Congress and the American people must be assured that a totalization agreement with Mexico is in the best interest of our nation's workers and their families, as well as the millions of seniors and individuals with disabilities who depend on benefits. In addition, we must have a firm grip on the costs and effects before moving forward; otherwise, we risk draining billions of dollars from Social Security and worsening the program's financial challenges.